

Revision: Texas
December 1993

SUPPLEMENT 9 TO ATTACHMENT 2.6-A
Page 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Texas

TRANSFER OF RESOURCES

1902(f) and 1917 of
of the Act

The agency provides for the denial of nursing facility services by reason of disposal of resources for less than fair market value.

EFFECTIVE JULY 1, 1988

1. Public Law 100-360 restricts the transfer-of-resources policy to clients eligible under institutional criteria for any uncompensated transfer occurring on or after July 1, 1988. Such transfer may result in the client's ineligibility for nursing facility care or home/community-based waiver services for the lesser of:

- 30 months from the month of transfer, or
- The number of months the uncompensated value would have paid for institutional care at the average cost of a private-pay patient.

- i. Transfer of an individual's home does not affect his eligibility when the title is transferred to his

- a. spouse, who lives in the home;
- b. minor or disabled child (as defined in title XVI of the Social Security Act);
- c. sibling who has equity interest in the home and has lived there for at least one year before the individual's institutionalization; or

STATE <u>Texas</u>	A
DATE RECD <u>DEC 30 1993</u>	
DATE APVD <u>JAN 20 1994</u>	
DATE EFF <u>OCT 1 1993</u>	
HCFA 179 <u>93-43</u>	

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Revision: Texas
December 1993

SUPPLEMENT 9 TO ATTACHMENT 2.6-A
Page 2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Texas

- d. son or daughter (other than a disabled or minor child) who lived in the home for at least two years before individual's institutionalization and provided care that prevented institutionalization.
- ii. Resources, including the individual's home, may be transferred without affecting eligibility when:
 - a. the resources are transferred to the individual's spouse (who lives in the community), or his disabled child, or to another person for the sole benefit of the spouse or child;
 - b. satisfactory evidence exists that the individual intended to dispose of the resource at fair market value;
 - c. satisfactory evidence exists that the transfer was exclusively for some purpose other than to qualify for Medicaid; or
 - d. denial of eligibility would cause undue hardship.

STATE	<i>Texas</i>
DATE RECD	DEC 30 1993
DATE APPROV	JAN 20 1994
DATE E.G.	OCT 1 1993
HCFA 177	93-43

An individual may claim undue hardship when denial of Medicaid would result in discharge to the community and inability to obtain necessary medical services. Undue hardship relates to hardship to the individual, not the relatives or responsible parties of the individual.

Undue hardship may exist when any one of the

TN No. 93-43
Supersedes 85-01 Approval Date JAN 20 1994 Effective Date OCT 1 1993
TN No. 85-01

Revision: Texas
December 1993

SUPPLEMENT 9 TO ATTACHMENT 2.6-A
Page 3

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Texas

following three conditions exists:

1. location of the receiver of the resource is unknown to the individual, or other family members, or other interested parties, and the individual has no place to return in the community and receive the care required to meet his needs;
2. the individual can show that physical harm may come as a result of pursuing the return of the resource, and the individual has no place to return in the community and receive the care required to meet his needs; or
3. the receiver of the resource is unwilling to cooperate with the individual and the department, resulting in the individual's needs not being met, and the individual has no place to return in the community and receive the care required to meet his needs.

STATE <u>Texas</u>	A
DATE RECD <u>DEC 30 1993</u>	
DATE APVD <u>JAN 20 1994</u>	
DATE CH <u>OCT -1 1993</u>	
HCIA # <u>93-43</u>	

TN No. 93-43
Supersedes 90-16 Approval Date JAN 20 1994 Effective Date OCT 1 1993

Revision: Texas
December 1993

SUPPLEMENT 9 TO ATTACHMENT 2.6-A
Page 4

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: _____

1902(f) States

- [] Under the provisions of section 1902(f) of the Social Security Act, the following transfer of resource criteria more restrictive than those established under section ~~1919~~(c) of the Act, apply:

1917(c) *

Other than those procedures specified elsewhere in the supplement, the procedures for implementing denial of eligibility by reason of disposal of resources for less than fair market value are as follows:

1. If the uncompensated value of the transfer is \$12,000 or less:
2. If the uncompensated value of the transfer is more than \$12,000:

STATE	<i>Texas</i>	
DATE	DEC 3 1993	
DATE	JAN 20 1994	
DATE	OCT - 1 1993	A 3.
DATE	<i>93-43</i>	
DATE		

3. If the agency sets a period of ineligibility of less than 24 months and applies it to all transfers of resources (regardless of uncompensated value):

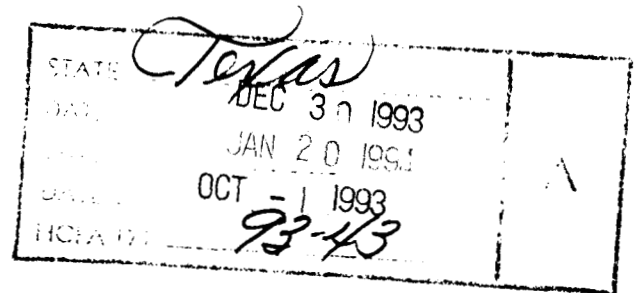
TN No. 93-43
Supersedes _____ Approval Date DEC 3 1993 Effective Date OCT - 1 1993
TN No. 90-16

* Correction made in NCFA
Regional Office

State: Texas

- If applicants transferred a countable resource within the last five years for less than the resource's fair market value to qualify for assistance, or to increase their AFDC grant, the length of denial is equal to the time the applicant's needs would have been met by the resource.

The only exceptions allowed are when the individual can provide evidence that the property was transferred exclusively for some purpose other than to become eligible for Medicaid, or undue hardship is found to exist.



TN No. 93-43
Supersedes _____ Approval Date _____ Effective Date OCT - 1 1993
TN No. 90-16